

Message Text

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TO AMEMBASSY BANGKOK PRIORITY

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E.O. 11652: N/A

TAGS: MARR, TH

SUBJECT: TAX RELIEF FOR DOD CONTRACTORS

REF: MANILA 1363

PASS TO LOUIS G. FIELDS, JR., ARRIVING 2/3/75 FROM MANILA

1. DEPARTMENT DOES NOT HAVE TEXT OF VIETNAMESE VAT EXEMPTION DECREE ITSELF. INSTEAD, DEPT HAS INTER ALIA FOLLOWING THREE DOCUMENTS WHICH SET FORTH NATURE OF DECREE: (A) REPORT OF DIRECTORATE GENERAL OF CUSTOMS OF MINISTRY OF FINANCE OF REPUBLIC OF VIET-NAM (GVN) WHICH CONTAINS FOLLOWING "AGREEMENT" ACHIEVED BY REPRESENTATIVES OF USG AND GVN IN MEETING ON AUGUST 23, 1973:
QUOTE AGREEMENT WAS REACHED BY THE DIRECTORATE GENERAL OF
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TAXATION AND THE U.S. EMBASSY'S REPRESENTATIVE ON THE FOLLOWING POINTS:

I.- AGENCIES SUBORDINATED TO THE US MISSION LIKE THE US

EMBASSY, USAID, DAO, DIRCON, U.S. CONTRACTORS ETC. SHALL BE EXEMPT FROM PAYING VAT WHEN PURCHASING GOODS OR UNDERTAKING ANY SERVICE.

II.- U.S. DIPLOMATIC AGENCIES AND THE PERSONNEL SUBORDINATED

TO THE US MISSION SHALL BE EXEMPT FROM PAYING VAT WHEN RECEIVING GOODS OR UNDERTAKING ANY SERVICE IN THE REPUBLIC OF VIETNAM.

III. PROCEDURES FOR EXEMPTION OF VAT IN PURCHASE OF GOODS ARE SET AS FOLLOWS:

THE AMERICAN AUTHORITIES (NUMBER LIMITED) SIGN AND STAMP THE VALUE ADDED TAX 'EXEMPTION FORM'.

THE FORM IS MADE IN TRIPPLICATE TO BE SUBMITTED TO THE TAX AGENCY (TO INDIRECT TAXES SERVICE IF SUBMITTED IN SAIGON, OR TO LOCAL TAX SERVICES IF IN PROVINCES):

- THE ORIGINAL FORM WILL GO TO PURCHASING INDIVIDUAL OR AGENCY, AFTER IT IS APPROVED AND SIGNED BY THE TAX AGENCY;

- 1 COPY WILL GO TO THE TAX AGENCY;

- 1 COPY FOR FILE AT THE AMERICAN AGENCY.

NAMES OF FOREIGN AND VIETNAMESE CONTRACTORS ENTERING INTO CONTRACT WITH AN AMERICAN AGENCY, AND SPECIMEN SIGNATURES OF AMERICAN AUTHORITIES WILL BE FORWARDED BY THE AMERICAN AGENCY TO THE TAX AGENCY.

IV.- TO SIMPLIFY TAX DEDUCTION OR RETURN, THE TAX AGENCY ALSO HAS APPROVED FOR THE IMPORT TRANSACTIONS, UNDERTAKEN BY FOREIGN OR VIETNAMESE CONTRACTORS TO CARRY OUT THE LIMITED OFFICIAL USE
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CONTRACTS INTO WHICH THEY HAVE ENTERED WITH THE AMERICAN AGENCY WITHIN THE FRAMEWORK OF THE U.S. ECONOMIC AND MILITARY ASSISTANCE PROGRAM, TO BE TEMPORARILY EXEMPT FROM VALUE ADDED TAX. THIS TEMPORARY EXEMPTION WILL BECOME A DEFINITE EXEMPTION WHEN THE CONTRACTOR JUSTIFIES THAT THE CONTRACTED MERCHANDISE HAS BEEN DELIVERED TO THE AMERICAN AGENCY.

V.- FOR LOCAL GOODS, FOREIGN CONTRACTORS ARE EXEMPT FROM VALUE-ADDED-TAX, UPON RECEIPT OF THEIR MERCHANDISE OR TRANSACTIONS. CONVERSELY, THE VIETNAMESE CONTRACTORS ENTERING INTO A CONTRACT WITH AN AMERICAN AGENCY, WHEN BUYING GOODS, MUST PAY VALUE ADDED TAX, AND WILL GET THE

TAX DEDUCTED OR RETURNED UPON PRESENTATION OF LEGAL DOCUMENTS CERTIFYING THE GOODS HAVE REALLY BEEN DELIVERED TO THE AMERICAN AGENCY. END QUOTE.

(B) LETTER FROM GENERAL DIRECTORATE OF TAXATION OF MINISTRY OF FINANCE OF RVN DATED OCTOBER 18, 1973, WHICH OFFICIALLY NOTIFIED USG OF FOLLOWING EXEMPT STATUS FROM VALUE ADDED TAX:

QUOTE CONSIDERING ARTICLE 4: PARA 5 DECREE LAW 035 TT/SLU DATED DEC. 21, 1972, BUSINESSES TO INCLUDE SUPPLY OF GOODS AND OTHER SERVICES PROVIDED FOR US MISSIONS WILL ENJOY A ZERO PERCENT OF VAT. THIS PRIVILEGE IS, HOWEVER, APPLIED ONLY TO THE SUPPLY OF GOODS AND SERVICES PROVIDED BY IMPORTERS, INDUSTRIAL PRODUCERS OR WHOLESALERS ACCORDING TO THE OFFICIAL REQUIREMENT OF THE U.S. MISSIONS AND THE REQUIREMENTS OF FOREIGN CONTRACTING COMPANIES PROVIDING SERVICES WITHIN THE ECONOMIC AND MILITARY AID PROGRAMS TO THE RVN.

THIS PROCUREMENT OF GOODS WITH ZERO PERCENT OF TAX CAN BE CARRIED-OUT WITH THE 'CERTIFICATE OF ZERO PERCENT TAX ENJOYMENT' TO BE ISSUED BY A LIMITED NUMBER OF OFFICIALS FROM THE U.S. MISSIONS ACCORDING TO PROCEDURES YOU ARE TO BE ADVISED LATER BY THE DIRECTORATE OF INDIRECT TAXATION. END QUOTE

(C) THE U.S. MISSION NOTICE CONCERNING PROCEDURES FOR LIMITED OFFICIAL USE
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OBTAINING ZERO VALUE ADDED TAX ON U.S. MISSION PURCHASES:

QUOTE BESIDES OTHER DETAILS, THIS CERTIFICATE ('CERTIFICATE OF ZERO VALUE ADDED TAX' ISSUED BY THE COMPETENT OFFICIALS OF THE U.S. EMBASSY) MUST BE NUMBERED SERIALY, AND MUST CLEARLY MENTION THE KIND AND QUANTITY OF GOODS, OR THE KIND OF SERVICE RECEIVED. THE CERTIFICATE BOOKS WITH COUNTER-FOILS WILL BE ISSUED BY THE CUSTOMS AND TAXATION OFFICIALS OF THE U.S. EMBASSY, TO A LIMITED NUMBER OF COMPETENT OFFICIALS OF THE U.S. MISSION. ONLY THESE COMPETENT OFFICIALS CAN SIGN CERTIFICATES ALLOWING THE PURCHASE OF GOODS WITH 0 PERCENT TAX RATE.

THE NAMES AND PATTERNS OF SIGNATURE OF THESE OFFICIALS WILL BE KEPT AT THE CUSTOMS OFFICE OF THE U.S. EMBASSY, AND AT THE DIRECTORATE OF INDIRECT TAXATION. IN CASE THE CONTRACTING AGENCY IS IN A PROVINCE, THE PATTERNS OF SIGNATURES, AND THE NAME-LIST OF THE RELATED OFFICIALS MUST ALSO BE SENT TO THE TAXATION SERVICE IN THE PROVINCE CONCERNED.

THE CERTIFICATE OF PURCHASE OF GOODS WITH 0 PERCENT TAX RATE, IS DRAWN UP IN TRIPLICATE (3 COPIES) AND MUST BE

SIGNED AND ISSUED BY THE AFORESAID COMPETENT AUTHORITIES FOR EACH RECEIPT OF GOODS OR SERVICES, BY THE U.S. MISSION (INCLUDING THE U.S. EMBASSY, USAID, DAO, DIRCON AND U.S. INVITED CONTRACTORS).

TWO COPIES OF CERTIFICATE OF 0 PERCENT VAT (INCLUDING THE ORIGINAL) SHOULD BE TRANSMITTED FOR VISA FROM THE PURCHASING OFFICE TO THE INDIRECT TAXATION DIRECTORATE (IF THE CONTRACTING-AGENCY IS IN SAIGON) OR TO THE PROVINCIAL IRS (IF THE CONTRACTING-AGENCY IS AT PROVINCE). THE IRSS ABOVE KEEP A COPY AND RETURN THE VISAED ORIGINAL TO PURCHASING OFFICE THAT WILL DELIVER IT TO THE SELLER.

THE SELLER KEEPS THE ORIGINAL OF THE CERTIFICATE IN HIS FILE OF BILLS. THE THIRD COPY OF THE 0 PERCENT VAT CERTIFICATE SHOULD BE FILED BY THE ISSUING OFFICIAL FOR EXHIBITION TO VIETNAMESE IRS AT THE LATTER'S REQUEST.

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EXAMPLE: WHEN AN AMERICAN CONTRACTOR IS PURCHASING LOCAL PRODUCTS WITH 0 PERCENT VAT, ON THE BILL ISSUED BY THE SELLER (IMPORTER, PRODUCER OR WHOLESALER) MUST BE INDICATED THE COST, QUALITY AND QUANTITY OF THE PURCHASED MERCHANDISES AND THE 0 PERCENT VAT EQUALS VNSO. THE CONTRACTOR MUST BEAR A WELL FILLED IN 0 PERCENT VAT CERTIFICATE, SIGNED AND ISSUED BY CONTRACTING OFFICER OR ANOTHER COMPETENT OFFICIAL FROM THE AMERICAN MISSION.

HE MUST CHECK WHETHER THE GOODS PURCHASED WITH 0 PERCENT VAT ARE APPROPRIATE OR NOT TO THE PERFORMANCE OF THE JOB FOR WHICH HE HAS SIGNED CONTRACT WITH THE U.S. GOVERNMENT. THE ABOVE PROCEDURES ARE ALSO APPLICABLE TO ALL PROCUREMENT TO THE U.S. EMBASSY, USAID OR DAO. END QUOTE.

2. RELEVANT PORTIONS OF AUSTRALIAN SOFA (T.I.A.S. 5349) INCLUDE THE FOLLOWING:

MEANS CIVILIAN PERSONNEL IN AUSTRALIA IN CONNECTION WITH ACTIVITIES AGREED UPON BY THE TWO GOVERNMENTS WHO ARE NEITHER NATIONALS OF, NOR ORDINARILY RESIDENT IN, AUSTRALIA, BUT WHO ARE:

(A) EMPLOYED BY THE UNITED STATES FORCES OR BY MILITARY SALES EXCHANGES, COMMISSARIES, OFFICERS' CLUBS, ENLISTED MEN'S CLUBS OR OTHER FACILITIES ESTABLISHED FOR THE BENEFIT OR WELFARE OF UNITED STATES PERSONNEL AND OFFICIALLY RECOGNISED BY THE UNITED STATES AUTHORITIES

AS NONAPPROPRIATED FUND ACTIVITIES; OR

(B) SERVING WITH AN ORGANISATION WHICH, WITH THE APPROVAL OF THE AUSTRALIAN GOVERNMENT, IS ACCOMPANYING THE UNITED STATES FORCES;

ARTICLE 5. GOODS ADMITTED INTO OR ACQUIRED IN AUSTRALIA FREE OF IMPORT DUTIES OR SALES TAX FOR THE PERSONAL USE OF A MEMBER OF THE UNITED STATES FORCES OR OF THE CIVILIAN COMPONENT OR OF A DEPENDANT MAY NOT BE TRANSFERRED TO LIMITED OFFICIAL USE
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ANOTHER PERSON WITHOUT THE APPROVAL OF THE AUSTRALIAN AUTHORITIES.

ARTICLE 6. (1) INCOME DERIVED BY A MEMBER OF THE UNITED STATES FORCES OR OF THE CIVILIAN COMPONENT FROM RENDERING SERVICES AS A MEMBER TO THE UNITED STATES GOVERNMENT IN AUSTRALIA, SHALL BE DEEMED NOT TO HAVE BEEN DERIVED IN AUSTRALIA, PROVIDED THAT IT IS NOT EXEMPT, AND IS BROUGHT TO TAX, UNDER THE TAXATION LAWS OF THE UNITED STATES. MEMBERS AND THEIR DEPENDANTS OTHER THAN PERSONS WHO, IMMEDIATELY BEFORE BECOMING DEPENDANTS, WERE AND AT ALL TIMES THEREAFTER HAVE CONTINUED TO BE ORDINARILY RESIDENT IN AUSTRALIA SHALL NOT BE SUBJECT TO AUSTRALIAN TAX IN RESPECT OF INCOME DERIVED FROM SOURCES OUTSIDE AUSTRALIA.

(2) PERSONAL PROPERTY WHICH IS SITUATED IN AUSTRALIA SOLELY BECAUSE A MEMBER OF THE UNITED STATES FORCES OR OF THE CIVILIAN COMPONENT OR A DEPENDANT IS IN AUSTRALIA SHALL, IN RESPECT OF THE HOLDING BY, TRANSFER BY REASON OF THE DEATH OF, OR TRANSFER TO OR BY, SUCH MEMBER OR DEPENDANT, BE EXEMPT FROM TAXATION UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA RELATING TO ESTATE AND GIFT DUTY.

(3) THE LAST PRECEDING PARAGRAPH SHALL APPLY ONLY IF THE PROPERTY CONCERNED IS SUBJECT TO AND IS BROUGHT TO TAX UNDER THE LAWS OF THE UNITED STATES RELATING TO ESTATE OR GIFT TAX AND SHALL NOT APPLY IN RELATION TO:

(A) PROPERTY HELD AS, OR FOR THE PURPOSE OF, AN INVESTMENT;

(B) INTANGIBLE PROPERTY REGISTERED AND COPYRIGHT SUBSISTING IN AUSTRALIA; OR

(C) PROPERTY HELD IN CONNECTION WITH THE CARRYING ON OF ANY BUSINESS IN AUSTRALIA.

ARTICLE 7. WHERE THE LEGAL INCIDENCE OF ANY FORM OF TAXATION IN AUSTRALIA DEPENDS UPON RESIDENCE OR DOMICILE,

PERIODS DURING WHICH MEMBERS OF THE UNITED STATES FORCES
OR OF THE CIVILIAN COMPONENT OR DEPENDANTS ARE IN AUSTRALIA-
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LIA SOLELY BY REASON OF THEIR MEMBERSHIP IN SUCH FORCES
OR IN THE CIVILIAN COMPONENT OR OF THEIR STATUS AS
DEPENDANTS SHALL NOT BE CONSIDERED AS PERIODS OF RESI-
DENCE THEREIN, OR AS CREATING A CHANGE OF RESIDENCE OR
DOMICILE, FOR THE PURPOSES OF SUCH TAXATION. END QUOTE.

3. TREATIES IN FORCE DOES NOT LIST A DEFENSE AGREEMENT
BETWEEN USG AND SPAIN IN 1952. HOWEVER, THERE IS SUCH
AN AGREEMENT DATED 1954 (TIAS 3094) WHICH BEARS THE
FOLLOWING LANGUAGE CONCERNING TAXES:

QUOTE 8. TAXES (A) THE CONTRACT PRICES, INCLUDING THE
PRICES IN SUBCONTRACTS HEREUNDER, DO NOT INCLUDE ANY TAX
OR DUTY WHICH THE GOVERNMENT OF THE UNITED STATES AND THE
GOVERNMENT OF SPAIN HAVE AGREED SHALL NOT BE APPLICABLE

TO EXPENDITURES IN SPAIN BY THE UNITED STATES, OR ANY
OTHER TAX OR DUTY NOT APPLICABLE TO THIS CONTRACT UNDER
THE LAWS OF SPAIN. IF ANY SUCH TAX OR DUTY HAS BEEN
INCLUDED IN THE CONTRACT PRICES THROUGH ERROR OR OTHER-
WISE, THE CONTRACT PRICES SHALL BE CORRESPONDINGLY
REDUCED.

(B) IF, AFTER THE CONTRACT DATE, THE GOVERNMENT OF THE
UNITED STATES AND THE GOVERNMENT OF SPAIN SHALL AGREE
THAT ANY TAX OR DUTY INCLUDED IN THE CONTRACT PRICES SHALL
NOT BE APPLICABLE TO EXPENDITURES IN SPAIN BY THE UNITED
STATES, THE CONTRACT PRICES SHALL BE REDUCED ACCORDINGLY.
END QUOTE. KISSINGER

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